

**REMARKS**

Applicant acknowledges receipt of the Advisory Action mailed  
March 16, 2010.

**Response To Advisory Action**

In the Advisory Action, the Examiner notes that the Request for Reconsideration has been considered but contends that the Request does not place the application in condition for allowance. Specifically, the Examiner requests further clarification regarding "Applicant's pore count and calculation." (Advisory Action continuation sheet.) The Examiner states that "[i]f Applicant has evidence . . . that can be submitted in the form of an Affidavit or Declaration, this evidence could be sufficient to overcome Kawata." (*Id.*)

Per the Examiner's request, Applicant provides the Declaration of Mr. Markus Hornung ("Mr. Hornung") submitted with this Response. Applicant notes that Mr. Hornung is an employee of Gambro Dialysatoren GmbH. Applicant further notes that the inventors of the instant application assigned their interest in the application to Gambro Dialysatoren GmbH.

In the Declaration, Mr. Hornung clarifies the method used to count the pores of Figure 1 of European Patent Document EP 0568045 A1 to Kawata et al. ("*Kawata*"). Specifically, Mr. Hornung states that:

to calculate this pore density, I used the central 50 mm (width) by 40 mm (height) section of Figure 1. I used this central section because the contrast is better in this section than at the edges of Figure 1. I interpreted dark blots surrounded by a light halo as pores.

(Declaration at 1.) Mr. Hornung further states that this method may even underestimate the actual number of pores as some pores may be missed due to poor contrast.

(Declaration at 1-2.)

Mr. Hornung also clarifies the method used to calculate the pore density for Figure 1. *Kawata* discloses the factor of magnification for Figure 1 as being 10,000X.

(See *Kawata* pg. 5, lines 8-10). Mr. Hornung states that:

based on the factor of magnification disclosed in *Kawata*, an area of 50 mm x 40 mm in the photograph corresponds to  $50 \times 10^{-4}$  mm x  $40 \times 10^{-4}$  mm in reality (i.e., an area of  $20 \times 10^{-6}$  mm<sup>2</sup>). I counted 52 pores in the central section. Thus, based on my measurements, the pore density is 52 pores per  $20 \times 10^{-6}$  mm<sup>2</sup>, or 2,600,000 pores per mm<sup>2</sup>.

(Declaration at 2.)

Therefore, as noted in Applicant's previous response, although the diameters of the pores in the outer surface of the membrane of *Kawata* overlap with the range claimed in the instant application (Example 2 of *Kawata* states 0.05-1  $\mu$ m, while independent claim 1 recites 0.5-3  $\mu$ m), the pore density of *Kawata* is more than an order of magnitude higher than the upper limit of the range recited in independent claim 1 (2,600,000 pores per mm<sup>2</sup> as compared to 10,000 to 150,000 pores per mm<sup>2</sup>).

Accordingly, the pore density recited in independent claim 1 is not inherent to the structure of *Kawata*. Specifically, *Kawata* does not disclose or suggest either explicitly or inherently "a fourth outer layer in the form of a sponge layer having an outer surface having pores with sizes in the range of 0.5-3  $\mu$ m, the number of said pores on the outer surface of the sponge layer being in the range of 10,000 to 150,000 pores per mm<sup>2</sup>," as recited in independent claim 1. Consequently, the Final Office Action has neither

properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the claims. Therefore, a *prima facie* case of obviousness has not been established and independent claim 1 is patentable over *Kawata*. Claims 3, 5-7, 20, 21, 24, and 25 are also patentable at least due to their dependence from allowable independent claim 1, and based on their additional recitations of novel subject matter. Applicant therefore requests that this rejection of claims 1, 3, 5-7, 20, 21, 24, and 25 under 35 U.S.C. § 103(a) be withdrawn and the claims allowed.

Applicant also respectfully requests withdrawal of the rejection of claims 1, 3-7, 20, 21, 24, and 25 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,935,141 to Buck et al. ("*Buck*") in view of *Kawata* and claim 4 which was rejected under U.S.C. § 103(a) as being unpatentable over *Kawata* in view of *Buck* and U.S. Patent No. 5,707,522 to Maeda et al. ("*Maeda*") at least due to the above-referenced deficiencies of *Kawata* and the reasons discussed in Applicant's reply of March 1, 2010. Applicant refers the Examiner to the reply of March 1, 2010, for arguments and remarks regarding any other outstanding issues.

### **Conclusion**

In view of the foregoing remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: April 20, 2010

By: /Aaron L. Parker/  
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**Attachments:**

Declaration of Markus Hornung